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State v. Skunkcap Appellant's Reply Brief Dckt. 41394

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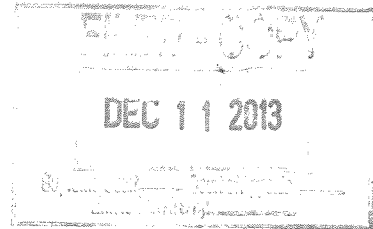
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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,)	NO. 41394
)	
v.)	BANNOCK COUNTY
)	NO. CR-2006-20842
)	
JAMES LEROY SKUNKCAP,)	APPELLANT'S REPLY BRIEF
)	ON REVIEW
Defendant-Appellant.)	
)	

STATEMENT OF THE CASE

Nature of the Case

Although Mr. Skunkcap has raised five issues on review before this Court, the State has opted to respond directly to only two of these issues: whether Mr. Skunkcap established fundamental error with regard to the district court's elements instruction for the offense of felony eluding an officer and whether Mr. Skunkcap demonstrated error in the district court's denial of his Idaho Criminal Rule 35 (*hereinafter*, Rule 35) motion

alleging an illegal sentence.¹ This Reply Brief is necessary to respond to the State's contention with regard to whether Mr. Skunkcap has demonstrated fundamental error in the district court's elements instruction on the charge of felony eluding an officer.²

Statement of the Facts and Course of Proceedings

The statement of the facts and course of proceedings were previously articulated in Mr. Skunkcap's Appellant's Brief in Support of Petition for Review. They need not be repeated in this Reply Brief, but are incorporated herein by reference thereto.

¹ The State "merely adopts the Respondent's Brief and the decision of the Court of Appeals in relation to those issues" other than those that the State chose to address in its Respondent's Brief upon this Court granting review. (See Respondent's Brief on Review, p.2.) This Court may wish to note that, of those issues upon which the State is relying on the prior opinion from the Idaho Court of Appeals, the Court of Appeals found reversible error in the district court's failure to adequately address a question posed by the jury regarding an ambiguity in the jury instructions. (Opinion, pp.3-6.)

² Given that the State has not responded directly to the remaining issues in this appeal, Mr. Skunkcap will rely on the argument contained in his Appellant's Brief in Support of Petition for Review with those remaining issues. He will likewise rely on his arguments in the Appellant's Brief in Support of Petition for Review with regard to the question of whether the district court erred in denying his Rule 35 motion alleging an illegal sentence.

ISSUES

1. Did the district court err in No.34746 where its instructions on felony eluding a police officer constituted a comment on the evidence and relieved the State of its constitutional burden of proof as to the material elements of this offense, and where the district court's instructions on simple assault relieved the state of its burden of proof as to all of the elements of the charged offense?

ARGUMENT

I.

The District Court Erred In No.34746, Where Its Instructions On Felony Eluding A Police Officer Created An Unlawful Presumption In The State's Favor And Relieved The State Of Its Constitutional Burden Of Proof As To The Material Elements Of This Offense

The State's sole contention regarding this issue is that Mr. Skunkcap has not demonstrated constitutional error rising to the level of a fundamental error – largely because the non-pattern instruction provided by the trial court contained language also contained in the statute defining the offense of felony eluding a police officer. This is not a correct assertion. Notably, the Idaho Supreme Court in *State v. Draper* held the opposite: the elements instruction provided to the jury for conspiracy in *Draper* did contain all of the elements for the charged offense, but presented them in a manner that operated to relieve the State of its burden of proof at trial and therefore constituted a fundamental error. *State v. Draper*, 151 Idaho 576, 589-592 (2011). In *Draper*, it was the **manner** in which the court presented the statutory elements of the offense that resulted in a jury instruction that relieved the State of its burden of proof at trial and therefore resulted in a due process violation.


Rather than strictly being limited to whether the jury instruction contains the same or similar language of that used in the statute, this Court reviews the elements instruction to determine whether the effect of the instruction would operate to relieve the State of its burden of proof. “The United States Supreme Court has held that in criminal trials ‘the State must prove every element of the offense, and a jury instruction violates due process if it fails to give effect to this requirement.’” *State v. Anderson*, 144 Idaho 743, 749 (2007) (quoting *Middleton v. McNeil*, 541 U.S. 433, 437 (2004)).

Moreover, the instruction provided by the district court did not “mirror” the language of the statute in light of both the spatial separation of the language at issue from the rest of the required elements of felony eluding a police officer, as well as the additional emphases placed on the court through marking this provision with two asterisks and using italics for this clause only. In doing so, the district court was conveying to the jury that this language had separate – and greater – import beyond the other essential elements of the charged offense. The text of I.C. § 49-1404 does not separate out its provision regarding the State’s burden of proof regarding the required nature of the signal to stop from the rest of the elements of felony eluding an officer. The text of this statute likewise does not contain double asterisks in front of this provision, nor is this language italicized within the statute. As such, the manner in which this element of the offense was presented to the jury constituted an alteration to the text of the statute (in form, if not in substance) that operated to reduce the State’s burden of proof at trial.

CONCLUSION

Mr. Skunkcap respectfully requests that this Court vacate his convictions of felony eluding an officer, assault, and malicious injury to property in 34746; his persistent violator sentencing enhancement in 38249, along with his sentence in 34746 and 38249; and his conviction of grand theft in 34747.

DATED this 11th day of December, 2013.


FNR SARAH E. TOMPKINS
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

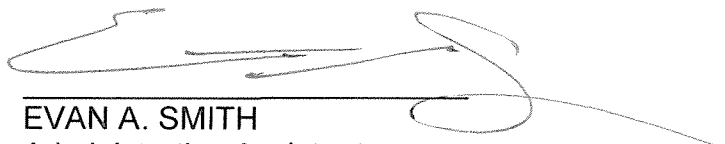
I HEREBY CERTIFY that on this 11th day of December, 2013, I served a true and correct copy of the foregoing APPELLANT'S REPLY BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

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